STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	
Petition for approval of delivery services tariffs an tariff revisions and residential delivery services implementation plan, and for approval of certain other amendments and additions to its rates, terms and conditions	)	**Docket No. 01-0423**

INITIAL BRIEF OF THE UNITED STATES DEPARTMENT OF ENERGY

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December 7, 2001

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Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), the United States Department of Energy ("DOE"), by its attorney, submits its Initial Brief in the above-captioned proceeding.

INTRODUCTION

This Initial Brief addresses the various issues raised by the parties in this proceeding regarding Cost of Service, Interclass Revenue Allocation, RCDS Rate Design, and Rate HVDS.

F. COST OF SERVICE AND RATE DESIGN

1. Cost of Service Study Issues

The Company has proposed that class revenues and rates be established on the basis of

marginal costs. This provides the Commission the opportunity to return to the practice of using marginal costs, which was followed for nearly 20 years up until the Commission's decision to use embedded cost as the basis for delivery services charges in Docket 99-0117. DOE strongly endorses the Company's proposal. That endorsement does not stem simply from the fact that nonresidential classes fare better under marginal as opposed to embedded costs under the current circumstances, as is suggested by Staff witness, Mr. Luth (ICC Staff Ex. 20.0, pp. 7-8, lines 137-162). DOE has continually supported the use of marginal cost in this jurisdiction and in others for over two decades, regardless of whether circumstances at the time would have resulted in more favorable treatment for DOE facilities under embedded costing. DOE supports the use of marginal costs because marginal costs are the correct costs for setting rates that lead to economic efficiency. Staff witness Luth does himself and his office a disservice by suggesting that DOE's only interest in marginal costs is self-serving. Moreover, DOE's witness, Dr. Dale Swan, has argued that the proper charges to the two DOE laboratories, Fermi National Accelerator Laboratory ("Fermi") and Argonne National Laboratory ("Argonne"), would be special facilities charges for the minor "last inch" distribution facilities that these laboratories use. If that were to happen, the DOE laboratories would be largely unaffected by the Commission's choice of whether to use marginal or embedded costs.

The record in this case should leave no doubt in the Commission's mind that marginal costs are the correct costs for regulators to use as the basis for setting class revenue requirements and for setting rates. The four Ph.D. economists who testified in this proceeding on the question whether marginal or embedded costs provide the proper basis upon which to set rates have unequivocally stated that marginal costs and not embedded costs are the correct costs to use.

(Gordon(ComEd Ex 2.0, pp. 12-15,lines 316-402), Makholm (ComEd Ex. 15.0, pp.6-7, lines 166-225), Swan (DOE Ex. 1.0, pp. 4-9, lines 58-172), Schink (Midwest Ex. 5.0, pp. 11-12, lines218-254)). Two witnesses for Staff, Mr. Lazare(ICC Staff Ex.7.0, pp. 3-10, lines 50-215) and Mr. Luth (ICC Staff Ex. 6.0, pp.4-9, lines 59-165) and Mr. Chalfont for Illinois Industrial Energy Consumers (" IIEC") (IIEC Ex. 2, pp.11-12) have argued against marginal costs on a conceptual basis. Mr. Bodmer (GC Exhibit 1.0, lines 143-145) takes issue not with the correctness of marginal costs, but with the Company's estimates of marginal cost. We will address Mr. Bodmer's concerns in a later section. None of the witnesses that challenge the use of marginal costs as the proper basis for setting rates have the credentials of the four Ph.D. economists that recommend the use of marginal cost. Moreover, as Dr. Swan states at lines 56-59 in DOE Exhibit 2.0 CR, "The long list of economists who favor the use of marginal cost pricing includes such luminaries in the field of economics and regulation as Professor William Baumol, who testified in the initial delivery services case for the Company, Professor James Bonbright and Dr. Alfred Kahn."

Dr. Swan and others dismissed the arguments of Messrs. Lazare, Luth and Chalfont in rebuttal testimony. At lines 32 through 59 of DOE Exhibit 2.0 CR, Dr. Swan demonstrates that Mr. Lazare's statement that marginal cost pricing is only relevant in the "artificial world of perfect competition" and cannot be applied to real world markets is quite simply wrong. As Dr. Swan notes, "...regulators have long attempted to reflect in their regulated outcomes the conditions that would obtain in a perfectly competitive world." (DOE Exhibit 2.0 CR, lines 45-46). This point has also been addressed in Dr Schink's direct testimony:

> A concise and elegant explanation of why the relative prices charged for the various services provided by a regulated entity such as ComEd should be set based on the marginal costs of providing these services was provided to the Commission by Professor William Baumol in Docket No.99-0117 and cited in the panel testimony of ComEd witnesses Lawrence S Alongi and Sharon M. Kelly (Alongi and Kelly Reb., ComEd Ex.32.0, pp. 4-5).
> Paraphrasing, Professor Baumol observes that a fully competitive unregulated market would produce the best outcome (e.g., the lowest prices for consumers and the highest level of output). He then observes that regulation will produce an outcome as close as possible to the best outcome if the regulatory rules constrain the regulated firm to behave as closely as possible to the way it would behave if the market were fully competitive. In a fully competitive market, market forces cause the relative prices for the various services produced by the firm to reflect the marginal (incremental) costs of producing these services and not to reflect their relative embedded (average) costs. The marginal (incremental) cost of producing a given service is the cost that is caused by the consumer of that service. Therefore, assuming that the regulatory objective is to produce an outcome that is as close as possible to the outcome that would be produced in a fully competitive market, the relative prices of the various services should be set based on the relative marginal costs of producing these services.

(Schink Dir., Midwest Ex. 5.0, at lines 228-247).

This has long applied to regulators' determination of appropriate rate levels and it has been extended to the determination of rate design over the last two to three decades. The Illinois Commerce Commission has been one of the leaders in this process.

Dr. Swan has clearly demonstrated the incorrectness of Mr. Lazare's contention that marginal costs cannot be used because there is a requirement to reconcile the estimated marginal costs with the embedded cost-based revenue requirement. Specifically, Dr. Swan explained in detail that the Equal Percentage of Marginal Cost (EPMC) reconciliation method that is proposed to be used by the Company is precisely the reconciliation method that economic theory prescribes

when not all prices for all components of service and for all customers can be set equal to the marginal costs of providing those services. Thus, there is theoretical underpinning for the rates proposed by the Company. As Dr. Swan and the other Ph.D. economists have testified in this proceeding, there is absolutely no theoretical foundation for using average embedded costs as the basis for determining class revenues and rates (See, for example, lines 156-159, DOE Exhibit 2.0 CR). Further, as Dr. Swan notes at lines 243-246, Mr. Lazare's argument against reconciliation seems especially empty when his associate, Mr. Luth, "essentially adjusts the Company's calculation of class embedded costs by the ratio of Staff's recommended revenue requirement to the revenue requirement requested by the Company, a reduction of each class' assigned embedded cost by approximately 10 percent."

Dr. Swan also demonstrated that embedded costs are no more "actual" than marginal costs and certainly are no less controversial, which were some of the tired arguments that the opponents of marginal cost dragged out once again (DOE Exhibit 2.0 CR, lines 210-219). What the Commission must determine is whether rates for the future should be based on backward-looking distribution costs that were incurred 20 or 30 years ago, or whether rates for the future should be based on the forward-looking marginal cost of providing distribution service. DOE believes there is only one logical choice – the use of marginal costs. Dr. Swan also dismissed the suggestion by these marginal cost critics that embedded costs are less controversial than marginal costs because they are actual costs (DOE Exhibit 2.0 CR, lines 220-240). One needs only recognize that the Company and Staff disagree on the total embedded cost amount by $172 million or 10 percent. Or, that Mr. Bodmer, on behalf of the City of Chicago, argues that the embedded cost of serving residential customers is 18 percent less than the Company's estimate of

the embedded cost of serving residential customers. If these differences are not the seeds of controversy, than nothing is.

The Company's estimates of marginal costs have also been criticized. Mr. Bodmer has concluded that the Company's estimates of marginal costs are so poor that they do not provide a superior basis for promoting economic efficiency than do embedded costs. It is interesting to note that Mr. Bodmer does not explain how embedded costs will promote economic efficiency at all, especially given that the four Ph.D. economists who addressed this issue have stated that embedded costs are quite simply the wrong costs to use for purposes of promoting economic efficiency. In any event, most of the criticisms of the Company's marginal cost estimates are off the mark.

Dr. Swan demonstrated the error in the criticisms leveled by Mr. Luth that the Company's estimates do not differentiate between the costs of serving old versus new customers and the cost of serving customers in different areas. First, he notes a fundamental misunderstanding by the company of the nature of marginal cost. Contrary to Mr. Luth's argument, economic theory has concluded that customers who use common facilities consume at the margin. Thus, the old customer imposes the same cost on the distribution system as does a new customer. Perhaps Mr. Luth, the accountant, can be excused for this fundamental misunderstanding of economic theory, but the Commission should attach the appropriate weight to Mr. Luth's argument. The second criticism, relating to locational differences in costs, asks what type of rate design the Commission is interested in promoting. Only if the Commission were interested in eliminating postage stamp rates for all customers in a given class, would differences in costs by location be relevant. DOE has received no indication that the Commission is so inclined. The same can be said with regard

to vintage rates for old and new customers even if there were a difference in costs. Finally, these criticisms of Mr. Luth would apply equally to embedded costs if they were relevant. That is, staff's own estimates of embedded costs do not differentiate by location or between new and old customers.

Mr. Luth's final criticism has to do with the use of replacement costs for distribution equipment in estimating marginal delivery services costs. Dr. Swan demonstrated that Mr. Luth's support of using depreciated equipment costs in determining marginal delivery services costs is generally incorrect. The cost of serving new or old load from common facilities is determined by the cost of the additional facilities that must be installed as load grows. That is the replacement cost of new facilities. It would make no sense to base marginal delivery services costs on the depreciated cost of equipment that was installed 10, 20 or 30 years ago. As Dr. Swan has testified, as long as the equipment in question is common equipment that is used by more than one customer, replacement cost is the proper way to determine the capital component of marginal facilities costs.

Dr. Swan does recognize that one of Mr. Bodmer's criticisms is relevant – that the Company's estimate of the marginal customer costs is too high. That is because the Company fails to recognize in its estimates that a large portion of the capital costs of meters and service drops is sunk, and sunk cost are not marginal (DOE Exhibit 2.0 CR, lines 332-341). Dr. Swan provided an alternative method (DOE Exhibit 2.1) by which to estimated marginal customer cost that specifically accounts for the sunk component of meters and service drops and includes only the much smaller continuing marginal capital costs of these pieces of equipment in the estimate of marginal cost. Dr. Swan provided this same alternative in Docket Nos. 87-0427 and 94-0065, but

the issue was not ripe for consideration because the differences in those cases between class marginal cost and revenue responsibilities were so great that use of Dr. Swan's estimating procedure for customers costs would have had no impact given the reconciliation constraints that were being considered by the Commission (DOE Exhibit 2.0 CR, lines 358-363). While the resulting estimate of marginal customer costs is too low because it excludes the continuing marginal capital cost of meters, Dr. Swan testified that he believes that it does provide a reasonable basis upon which to set class revenues and rates in this proceeding. Dr. Swan's revised marginal costs with the Company proposed EPMC reconciliation method, would shift approximately $34 million from the residential classes to the other classes of customers, as compared to the company's proposal. As Dr. Swan notes, that would be approximately "...$36 million above the embedded cost-based residential revenues that would result from use of the Company's embedded cost study; and nearly $210 million more than the residential embedded cost-based revenues proposed by Mr. Bodmer." (DOE Exhibit 2.0 CR, lines 398-401).

DOE believes that the primary reason that the Commission decided to abandon the use of marginal costs in Docket No. 99-0117, after relying on this cost concept for nearly two decades, was its concern regarding whether the use of marginal costs would result in a pricing mechanism that would preclude effective competition for metering and billing services. While this is a legitimate concern, DOE strongly believes that the solution to this question by the Commission, which relates to the pricing of only a minor portion of the services at issue in this case, should not determine how rates are set for the lion's share of the components of delivery services. DOE would hope that the Commission would return to the leadership role that it played for two decades and once again endorse the use of marginal costs as the proper basis for determining class

revenues and rates. The revised marginal cost presented by Dr. Swan can provide a reasonable point of departure for setting class revenues and rates, as long as the Commission recognizes that Dr. Swan's customer cost estimates are somewhat understated. But, even so, they provide a much more reasonable and economically proper basis for setting rates than do the embedded cost estimates of either the Company, the Staff or the City of Chicago, all of which would impose significantly higher total costs on nonresidential classes than is warranted by appropriate marginal cost pricing.

At the very least, if the Commission does decide to use some estimate of embedded costs as the basis for setting class revenues and rates in this proceeding, DOE respectfully suggests that it do so on a temporary basis and reserve judgment regarding what cost concept should be used for future rate design. In addition, DOE respectfully suggests that the Commission should direct the Company to conduct a marginal costing workshop that would permit all parties to participate in the process of developing a better set of marginal cost estimates for delivery services, which can be used by the Company in the next delivery services proceeding. DOE stands ready to participate in such a workshop if it were to develop.

2. InterClass Revenue Allocation

The Company has proposed to determine class revenue responsibilities by reconciling its estimates of class marginal cost responsibilities with the Equal Percent of Marginal Cost (EPMC) reconciliation method. Some parties have argued that class revenues be based on class embedded cost responsibilities, usually as estimated by their own witnesses, or reconciled to the Company's

class embedded cost responsibilities in the case of Staff. Others have argued that the allowed revenue increase be spread across the board on an equal percentage basis.

DOE believes that class revenues should be based on the costs of serving the different classes of customers. There is absolutely no basis to distribute the revenue increase on an across-the-board percentage basis. As we noted above, DOE strongly believes that marginal costs are the proper basis for determining class revenues and, as Dr. Swan has testified, the EPMC reconciliation method has strong theoretical underpinnings and should be used. While DOE is prepared to accept the Company's estimates of marginal costs as the basis for class revenues, DOE recognizes that the Commission may have misgivings over the Company's estimates of marginal customer costs as being too high. In that event, DOE believes that Dr. Swan's alternative estimates of class marginal cost responsibilities, based on excluding 100 percent of the capital components of the marginal costs of meters and service drops, provides a reasonable alternative marginal cost estimate that can be used to determine class revenues in this case. We would strongly endorse the use of those costs in conjunction with the EPMC reconciliation method.

3. RCDS Rate Design

a. Demand Ratchet

i. General Service Ratchet

The Company has proposed to include a 12-month, 100% ratchet in its facilities demand charge for nonresidential customers that are billed on a demand charge basis. The purpose of

including the demand ratchet is, in the words of Company witnesses Clair and Crumrine, as "...the only way to properly allocate delivery services costs within a class to the customers who actually use the most facilities and services." (ComEd Ex. 12.0, lines 326-327). DOE agrees with the Company's analysis of the benefits and the need for a ratcheted demand charge and wholly endorses the use of the Company's proposed 12-month, 100% ratchet in recovering the demand-related costs of facilities from nonresidential customers that are billed on a demand basis.

Dr. Swan addressed the ratchet issue at some length in his direct testimony. He demonstrated that the use of a ratcheted demand charge can be "a useful device to track differences in costs among customers in the same rate class...[especially] when costs are determined by the maximum demand of the customer...." (DOE Exhibit 1.0, lines 391-393). Without a ratchet, customers who have significant month-to-month variation in their peak demands will not pay their fair share of the costs of serving their class, and customers with stable month-to-month peaks will be required to subsidize those customers with large month-to-month load variations. The 12-month ratchet largely eliminates this cross-subsidy.

Those who oppose the use of a ratcheted demand charge seem to argue principally that the use of a ratchet eliminates some of the customer's control over his bill, especially when he faces an economic downturn in his business. The Commission's Order in Docket No. 99-0117 is referenced to bolster this argument. In the Order, the Commission expressed concern that customers would have to continue paying high demand charges in the face of an economic decline for up to an additional 11 months, whereas the utility would be insulated from a revenue decline resulting from the customer's loss of business during this period. We appreciate the Commission's concern about this circumstance. However, DOE believes that Dr. Swan's

assessment of this situation is correct. He suggests that the Commission's concern is misplaced. Business firms that enter into such contracts to establish the liability for fixed costs all the time. He provided the analogy of fixed office lease payments, under which payments are not reduced during an economic downturn to reflect the fact that less space is required because the firm has laid off a number of workers.

What we do know is that unratcheted demand charges do not properly match rates and costs. It will result in a cross-subsidy from customers with stable month-to-month loads (such as the Fermi National Accelerator Laboratory) to customers with highly seasonal and erratic load patterns. If the Commission concurs that rates should reflect costs, it should adopt the Company's ratcheted demand proposal. The adverse impacts on businesses with erratic demands in the event of an economic downturn are no different than all of the other contractual cost obligations that the market will force these business firms to assume. There is no basis for insulating these customers from the fixed costs that they cause the utility to incur even when their load falls, especially if those costs must be paid by other customers on the system that do not cause them. If this Commission is committed to a market solution, DOE respectfully suggests that the quasi-contractual arrangement of a 12-month ratcheted demand charge is fully appropriate.

A final note is in order. If the Commission decides to reject the Company's ratchet proposal, then it will be necessary to redesign the demand charge. In particular, the per unit charge will have to be increased to recover the same revenue, since the number of ratcheted billing demands exceeds the number of uratcheted billing demands. In that event, both the demand charge, and the HVDS credit must be increased to keep all nonresidential demand charge

customers revenue neutral, including customers with service at or above 69 kV that qualify for the HVDS credit. The Company failed to increase the HVDS credit when it designed unratcheted rates. Dr. Swan challenged that calculation and the Company witnesses Alongi and Kelly adopted Dr. Swan's suggested revenue neutral calculation with certain modifications in their rebuttal testimony, which was provided in their Attachment C (ComEd Ex. 32.0, Attachment C).

In his surrebuttal testimony to the Company, Dr. Swan stated that the unratcheted calculation of the HVDS credit as presented by Mr. Alongi and Mrs. Kelly in their rebuttal testimony is "a reasonable calculation of the credit". He went on further to testify that , "Should the Commission decide to adopt the HVDS credit based on marginal costs, the EPMC method, unratcheted demands but a lower overall revenue requirement, I believe the method presented by Mr. Alongi and Mrs. Kelly in their rebuttal testimony for calculating the HVDS credit should be used to determine the appropriate credit at the final allowed revenue requirement." (DOE Exhibit 2.0 CR, lines 537-541) DOE urges the Commission to accept Dr. Swan's recommendation.

4. Rate HVDS

a. Eligibility

The Company has proposed to provide the HVDS credit to all customers taking service at voltage levels of 69 kV and higher. IIEC witness Chalfont has suggested that eligibility for a credit be extended to customers who take service at 34.5 kV and higher, with a smaller credit offered to 34.5 kV customers. (IIEC Exhibit 2, page19, line 22 - page 20, line 1) The rate designer must make a tradeoff between the objective of matching rates and costs and the objective of practicality when deciding what rate differentials to incorporate in the rate design. Many

customers have differences in usage attributes that result in small differences in the cost of service. But, unless those cost differences are substantial, the utility must group them under the same rate simply because the utility cannot design separate rates for all customers that are a little bit different than everyone else. Different rate treatment must be reserved to account for significant differences in costs. There is such a significant difference in costs between serving customers below and above 69 kV. This is demonstrated by the Company's cost studies. Mr. Chalfont argues that there is a significant enough cost difference between customers served at and below 34.5 kV to warrant qualification for a lower HVDS discount for 34.5 kV customers.

DOE has no objection in principle to extending a smaller credit to 34.5 kV customers if the Commission judges that the difference in the cost of serving customers at and below 34.5 kV is great enough to warrant differential rate treatment. At the same time, however, if the Commission should decide that it wishes to see additional evidence on this issue and so intends to defer the decision regarding 34.5 kV customers, DOE would urge the Commission not to also defer judgment on the appropriateness of a discount to customers at and above 69 kV. There is overwhelming evidence in this proceeding to warrant the HVDS credit for the 69 kv and up group of customers.

b. Calculation of the Credit

If the Commission decides to provide an HVDS credit to high voltage customers, it must then decide what should be the value of that credit. That gets to the question of the appropriate way to calculate the HVDS credit. In this regard there are four issues before the Commission that DOE would like to comment on.

Mr. Chalfont for the IIEC has argued that the Company has miscalculated the credit both in his direct and rebuttal testimony (IIEC Exhibit 2, page 19, lines 3-11; IEC Exhibit 4, page 13, lines 15-19). Mr. Alongi and Ms. Kelly responded to Mr.Chalfont's criticism in their surrebuttal testimony (ComEd Ex.50, lines 169-173), pointing out that they did calculate the credit correctly and referring to the mathematical proof of the correctness of their calculation that was provided by Dr. Swan his rebuttal testimony (DOE Exhibit 2.0 CR, lines 708 - 724). DOE is certain that the credit has been calculated correctly and it is our understanding that Mr. Chalfont has now accepted the correctness of the Company's calculation based on Dr. Swan's proof. DOE recommends that the Company's calculation of the credit be adopted by the Commission.

Mr. Luth has proposed that, instead of a credit to the standard demand charge , separate demand charges for all qualifying high voltage customers be developed (ICC Staff Exhibit 6.0, lines 208-221). In theory, this approach makes sense in that it provides a direct charge rather than a credit to a rate designed for another group of customers. In practice, however, this could be unnecessarily expensive for the Company. That is because implementation of Mr. Luth's rate design would entail a number of administrative changes and costs, whereas the addition of a credit is a fairly straightforward procedure, with which high voltage customers are already familiar (ComEd Ex. 31.0, lines 573-589). As one of the customers that currently receives a nominal high voltage credit at its two installations, DOE concurs that the credit approach is more sensible, given the administrative difficulties of developing a separate high voltage rate for each appropriate rate schedule.

As we pointed out in the section on ratcheted demand charges, the Company must increase both the ratcheted demand charge and the ratcheted HVDS credit if the Commission

directs the Company to base the RCDS rate on unratcheted billing demands. That must occur to maintain revenue neutrality for the group of high voltage customers. As we noted above, Company witnesses Alongi and Kelly have agreed with this revision to their original calculation of unratcheted rates, and Dr. Swan has agreed that the Company's revised calculation method should be adopted. DOE recommends that the Commission direct that this method be implemented.

One final and critical issue needs to be addressed regarding the calculation of the HVDS credit. Mr. Stephens for the IIEC has recommended that "the rates approved in this case should include Rider HVDS credits that are one-half the full credit level for the first two years, with the full credit level being implemented two years after the new rates take effect." (IIEC Exhibit 1, p. 2, lines 17-19). The purpose of Mr. Stephens phase-in recommendation is to moderate the billing impacts that will result from eliminating the existing cross-subsidy, under which high voltage customers have been required to subsidize lower voltage customers. DOE objects to the phase-in proposal. As Dr. Swan stated in his rebuttal testimony, this simply amounts to a requirement that high voltage customers be required to continue to subsidize lower voltage customers for another two years (DOE Exhibit 2.0 CR, lines 695-704). He reminds us that we are not talking about the rate impacts on residential customers but rather the continuation of a subsidy to sometimes rather large business customers. The issue is not whether one can heat one's home during the winter, but rather how much black ink there will be on the bottom line. As Dr. Swan states, "We are talking about one business being required to subsidize another, which runs counter to the whole idea of placing the provision of electric utility service on a competitive free market basis." (DOE Exhibit 2.0 CR, lines 700-702). The Commission should reject Mr. Stephens

recommendation to phase-in the full HVDS credit.

c. *Allocation of Costs to Other Classes*

The proposal by the Company to include an HVDS credit rider is intended to rectify an existing inequity in the design of nonresidential rates. High voltage customers use only a fraction of the distribution system, if any at all. It is patently unfair to require that these customers pay for a system they do not use. That is one of the most fundamental tenets of cost-based rate design. Under the existing RCDS rates, high voltage customers are paying well in excess of the cost of providing them with service. Since class revenues are set on the basis of total class costs, that means that lower voltage customers in those nonresidential classes are paying less than the costs they impose on the system. Thus, there is an intra-class cross-subsidy from high voltage to lower voltage customers.

The Company-proposed HVDS credit will eliminate most of this cross-subsidy. That means that the Company is only proposing that lower voltage customers within these classes pay the full cost of providing them with service. It is fully appropriate that these other customers within those classes experience increases in their rates, because it simply means that they are now paying the full cost of providing them with service. There is no basis whatsoever to shift any of this cost responsibility on to other classes of customers. As long as the class revenue requirements are based on the full cost of providing the classes with service, then the reduction in the revenue responsibility of high voltage customers that results from the appropriate and equitable application of the HVDS credit should result in the increase in revenue responsibility of the lower voltage customers in each of those classes. Customers in other classes should not be

required to bear any of the burden of the costs of serving these lower voltage nonresidential customers.

d. Exemption From the Rate RCDS Facility Charges

DOE has two very large customers that take service at high voltages and fall into the category of greater than 10 MW. Fermi takes service at 345 kV and has an expected demand each month of around 58 MW. Argonne takes service at 138 kV and has an expected peak demand of around 44 MW. Dr. Swan provided a detailed description of how these two research laboratories are served by ComEd (DOE Exhibit 1.0, lines 201-216). Fermi is served by two 345 kV transmission lines owned by ComEd, which are classified as transmission assets subject to the regulation of the FERC. These two lines are interconnected with 345 kV lines owned by DOE and by four isolating switches owned by ComEd. These four switches make up what Dr. Swan referred to as the "last inch" distribution equipment that serves Fermi. By "last inch", Dr. Swan referred to the miscellaneous pieces of distribution equipment that are installed to provide a customer with service and has no system function. Argonne is served by a looped 138 kV line that ComEd also classified as a transmission asset. As Dr. Swan notes, "the 'last inch' for Argonne is made up of two isolating switches and a few feet of cable." Dr. Swan went on to testify that in Docket No. 99-0117 he estimated that the total installation cost of these minor pieces of equipment was unlikely to exceed $900,000, but for which DOE is currently being required to pay annual charges in the neighborhood of $2 million a year. This is clearly inequitable.

Customers such as Argonne and Fermi are essentially taking service off of the transmission

system. However, because all retail customers are, by definition, distribution customers, some minor "last inch" piece of equipment is classified as distribution equipment. However, other than these "last inch" pieces of equipment, these few customers do not use the distribution system and they should not be required to pay for the whole distribution system, which is what occurs under the current rate design. DOE's Fermi and Argonne laboratories are two of these customers. Others in this small category appear to be the generation plants of Midwest Generation, LLC.

Dr. Swan testified in Docket No. 99-0117 that the proper way to charge these customers was to waive the facilities demand charge and the existing high voltage discount and to recover the cost of the "last inch" minor pieces of distribution equipment through a special facilities charge, just as other dedicated equipment cost (e.g., transformers) is regularly recovered from large customers. This remains the best method by which to recover the appropriate distribution facilities costs from customers like Argonne and Fermi that do not use the distribution system.

However, Dr. Swan testified that, if the HVDS credit, as proposed by the Company, based on marginal costs, were to be implemented, that credit, in conjunction with the Rider 8 credit, "goes a long way toward reducing the subsidy that was being paid for by high voltage customers like Fermi and Argonne." (DOE Exhibit 1.0, lines 262-264). Specifically, Dr. Swan estimated that, under the Company's proposed HVDS credit, DOE would wind up overpaying by approximately $100,000 a year. As Dr. Swan stated, "DOE is prepared to support this proposed rate design for the class of customers above 10,000 kW," (DOE Exhibit 1.0, lines 268 -271) because that will represent an acceptable reduction in DOE's overcharges.

This approach will not be acceptable to DOE, however, if the magnitude of the HVDS credit is reduced as a result of some sort of phase-in, or if the net facilities charge, after

application of the credit, increases significantly because the Commission decides to base rates on some version of an embedded cost of service study. That is because the amount of the overcharge will remain excessive, given that neither of the DOE facilities actually uses the distribution system. If either of those circumstances were to come to pass, then DOE strongly urges the Commission to adopt Dr. Swan's recommendation that the few high voltage customers that do not actually use the distribution system be required to pay special facilities charges to recover the carrying cost of the "last inch" pieces of distribution equipment that have been installed to serve these customers.

Dr. Swan has argued that this approach is feasible because there are only a handful of such customers that would qualify, and mechanisms can be implemented in special facilities contracts to ensure that the Company is made whole for the leasing of this equipment (DOE Exhibit 2.0 CR, lines 614-649). The Company clearly agreed when Ms. Clair and Mr. Crumrine proposed to treat certain Midwest Generation plants in exactly the manner that was proposed by Dr. Swan. Specifically, they proposed in their surrebuttal testimony that, "each site be charged for the costs that ComEd incurred to provide the additional facilities at that service point. This would be handled in a manner similar to that which ComEd currently uses under Rider 6 - Optional Facilities." (ComEd Ex. 49.0, lines 241-245). During cross examination, these witnesses agreed that their proposed solution for Midwest Generation facilities is essentially the same as that proposed by Dr. Swan:

> Q. ... Isn't that essentially the same mechanism as the special facility's [sic] approach recommended by...Dr. Swan?
>
> A. ...Yes. I believe that methodologically is similar to what Dr. Swan has proposed. (Tr. 1054, lines 3 -17).

Ms. Clair and Mr. Crumrine also stated during their cross examination that the characteristics of certain Independent Power Producers (IPPs) are very similar in their use of distribution facilities to the characteristics of the Fermi and Argonne laboratories as described by Dr. Swan:

> Q. ...Have you proposed this solution for the IPPs because they use only minor pieces of company-owned distribution equipment as compared to other customers in their class?
>
> A. For the case of IPPs in which the facilities used to serve auxiliary power flow over essentially the same facilities that are sized to meet generator's outflow, and that associated with that there are only minor and coincidental uses of distribution or nontransmission equipment, that's the fundamental reason. ...we are proposing a customer specific charge for the... use of those incidental facilities. (Tr. 1055, lines 1-11, 15-17).

And further on, this exchange took place:

> Q. Would you agree that there are load customers who also use only minor pieces of distribution equipment that is owned by ComEd?
>
> A. Yes, there are customers in that situation. (Tr. 1056, lines 7-9, 13-14).

The obvious question for the Commission to ask is this: If the few end-use customers like Fermi and Argonne that only use a few minor pieces of distribution equipment look very much like the IPPs that also use only minor pieces of distribution equipment; and if the Company is prepared to recover the cost of these minor pieces of distribution equipment from the IPPs through a special facilities charge; then why shouldn't this treatment be extended to the few large end-use customers like Fermi and Argonne? DOE believes that the Company's real concern regarding the use of special facilities charges to recover these costs is that it will set a precedent

that other customers will try to use even if their circumstances do not justify that treatment. DOE believes that the Company is willing to provide this special treatment to the IPPs because the unusual status of these customers as generators provides a "bright line" that the Company can use to differentiate this group of customers from all others. This was confirmed by Ms. Clair and Mr. Crumrine during their cross examination:

> Q. Was another consideration for proposing this solution for the IPPs ... because IPP status provides a bright line separation between these customers and other customers who might seek special facility's [sic] treatment without justification?
>
> A. I think that is one consideration, yes. (Tr. 1055, line 22 - Tr. 1056, line 6).

DOE understands the Company's concern in this regard. Providing special rate treatment to correct for unique and especially egregious inequities that would result from application of a standard rate to a few customers can open "Pandora's Box" if the basis for that special treatment does not clearly separate these special cases from other customers who are similar with regard to some of the special customers' attributes. The Company is looking for a "bright line" of demarcation between the special customer and all others. DOE believes that such a bright line clearly exists for Fermi. During the cross examination of Ms. Clair and Mr. Crumrine, it was established that the Company only has two end-use retail customers served at 345 kV, and both of these customers, just like the qualifying IPPs, "do not use very much local distribution facilities," to quote Mr. Crumrine. (Tr. 1057, lines 6-7). One of those customers is DOE's Fermi laboratory. Further, Mr. Crumrine agreed that extending the special facilities treatment to the 345

kV customers would still provide a "bright line" that would prevent unqualified customers from attempting to receive similar treatment. Specifically, Mr. Crumrine stated, "We have only got two of them. I guess that would be a very clear line of demarcation, yes." (Tr. 1058, lines 7-9). Finally, Mr. Crumrine agreed during his cross examination that the administrative burden on the Company of providing special facilities treatment to its 345 kV end-use customers would be no different than the administrative burden associated with providing special facilities treatment to the IPPs that the Company proposes (Tr. 1058, lines 15 - 21).

DOE believes that there is no basis for denying Fermi and the other 345 kV customer with the same special facilities treatment to recover the cost of the few miscellaneous pieces of distribution equipment used by these customers that is proposed by the Company for certain qualifying IPP installations. We believe Mr. Crumrine's responses during his cross examination indicate that the Company now shares this view. We urge the Commission to approve the Company's special facilities treatment for qualifying IPPs and to extend that treatment to the two 345 kV customers.

DOE still firmly believes that Argonne National Laboratory should also qualify for this treatment. We understand that service at 138 kV may not provide the "bright line" of demarcation that the Company is seeking, but that does not result in equitable treatment for Argonne. Perhaps a similar "bright line" can be established later for Argonne to permit it to be treated in a more equitable manner as well. That "bright line" qualifier might be that all customers that are served from delivery lines that are classified as FERC-jurisdictional transmission lines, save the few pieces of "last inch" distribution equipment, would qualify for special facilities treatment.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, DOE respectfully requests that the Commission adopt each of DOE's recommendations described above.

December 7, 2001

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	
Petition for approval of delivery services tariffs	)	
and tariff revisions and of residential delivery	)	Docket No.01-0423
services implementation plan, and for approval	)	
of certain other amendments and additions to its	)	
rates, terms and conditions	)	

NOTICE OF FILING

To: All Parties on attached Service List

PLEASE TAKE NOTICE that on this 7th day of December, 2001, I have filed with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield , Illinois 62794, the Initial Brief of the United States Department of Energy in the above-captioned docket.

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CERTIFICATE OF SERVICE
DOCKET NO.01-0423

I, Lawrence A. Gollomp, do hereby certify that a copy of the United States Department of Energy's Initial Brief in the above-captioned docket was served upon each of the parties on the attached service list, by Federal Express and by electronic mail on this 7th day of December, 2001.

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